M.

Regd. II-37—100,000—22-5-43.

REVENUE (19~~43~~ 48) Department.

MS. SERIES.

G.O. No. 1142

Dated 12-5-48.

[Despatch Abstract.]

Acts—Madras Acts—XVIII of 1941, XXVIII of 1942 and XXI of 1943 relating to village officers—re-enactment—Papers recorded.

Back Papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Ms	1138	Rev.	28-5-46.				
"	2341	"	15-10-41				
"	2049	"	2-9-47				
Lodged	1312 C/47	"	15-5-47				
Memo	3950 C/46-4	"	17-1-47				
Lodged	5772 C/41	"	12-12-46				
Lodged	2097C/46	"	27-6-46				
"	2042C/46	"	5-6-46				
"	2098C/46		4-2-46				
G.O.	2834/46		2-11-43.				

Further Papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

REVENUE DEPARTMENT.

Village Officers--Acts passed during the Section 93 regime--Re-enactment.

To Assistant Secretary.

The following Acts, amending the village Officers' Acts, were passed during the Section 93 regime:-

(1) The Madras Proprietary Estates' Village Service and the Hereditary Village Offices (Amendment) Act, 1941 (Madras Act XVIII of 1941.)

(2) The Madras Hereditary Village Offices (Amendment) Act 1942 (Madras Act XXVIII of 1942)

(3) The Madras Proprietary Estates' Village Service and Hereditary Village Offices (Amendment) Act 1943 (Madras Act XXI of 1943).

The Acts will be in force for two years from the date of revocation (30-4-46) of the Proclamation under Section 93 of the Government of India Act 1935, unless sooner repealed or re-enacted by the Provincial Legislature.

2. For an explanation of the provisions of the Acts, please see the following:-

Item (2) in para 1 above:- The note on page 1-4 N.F. of G.O. No.1138, Revenue dated/28.5.46 explains the reasons for passing the Act. Perusal is also requested of the subsequent noting and orders in the G.O. from which it will be seen that the Government are watching the effect of the Amendment Act, with reference to any decisions that may be given by Courts. The Board's report in the matter has just been received. The Board has reported that no civil court has yet given any decision, and has proposed that the working of the Act may be watched for one more year. The Board's report is being dealt with separately in A section (c/No.2026 A/47)

Item (3) in para 1 above:- Perusal is requested of the Memorandum for Legislation (prepared before the Act was passed) at page 5-6 c.f. of G.O.2834 Revenue dated 2.11.43.

3. It may be mentioned here that the following matters are now under the consideration of the Government:-

(a) The re-organisation of the present system of village establishments on more efficient and economic lines.

(b) Amendment of the Village Officers' Acts so as to specifically vest in the Board of Revenue and the Government powers to revise orders passed by the subordinate authorities in regard to the appointment and punishment of village officers governed by those Acts.

The present position in regard to these two matters is as follows:-

Item (a)

The Finance (Reorganisation) Department has framed certain tentative proposals, involving the abolition of the hereditary right to village offices, and referred them to the Board of Revenue for remarks. The Board's report has not yet been received.

Item (b) : It is not yet decided whether this should be proceeded with. A Memorandum for Legislation was prepared and

when.....

when the file went to Honourable Minister (Home) he noted to the effect that it was not necessary to proceed with the legislation. The file has been circulated to Honourable Minister (L.R.) with reference to Honourable Minister(Home)'s minute.

4. The 3 Amending Acts mentioned in para 1 above will cease to have effect by the end of April 1948. There is probably no likelihood of a final decision being before then reached on any of the two matters referred to in para 3 above. In view of this and of the circumstances explained in the Legal Department's note dated 12.7.47, it is for orders whether the 3 Acts will be re-enacted. No modifications to the Acts seem necessary. They may be re-enacted as they are except for the defenition of war Service in Madras Act XXI of 1943.

H.M (L.R) (Sd.) 11.8.47
I have no objection
(SD) 12.8.47.

To Assistant Secretary.

Please see orders on the previous page 2 with reference to the discussions at page 4 of lodged2042 C/46 Revenue dated/5.6.46, the definition of war service" occurring in Madras Act XXI of 1943 should be substituted by a definition on the levies of the latest definition of the term in the Madras Civil Services (war service Personnel) recruitment rules, 1941, at page 154 of the Services Manual, Volume I, 1946 edition, as amended.

3. A draft memorandum for legislation is submitted. Legal may see. The file may go to legal through Public (Services) with references to para 2 above.

(Sd.)

Public (General)

Legal.

Public (Services)Department.

Para 2 of the Revenue department's note above and para 6 of the Memorandum letter may be perused and the file passed on to Legal.

(Sd.)

LEGAL DEPARTMENT.

The alterations indicated in red ink on the draft Memorandum may be made.

(Sd.)

REVENUE DEPARTMENT.

To Assistant Secretary.

With reference to the instructions in the nf not of Public (General) Department dated 31.7.46, the file may now be circulated to all Honourable Ministers and His Excellency for orders whether legislation on the levies indicated in para 8 of the memorandum will be considered necessary.

The.....

2. The subject matter of the legislation also falls under entry 4 of the concurrent legislation list--see para 7 of the memorandum. But as the Government of India were consulted before. see para 83-85 of the G.O.2815 Revenue dated/21.12.42--It is not necessary to consult them now under section with reference 33A-see the concluding portion 7 the Public (General) Department dated/31.7.46.

(Sd.)

Honourable Minister (Land Revenue)
Honourable Minister (Revenue Department)
" (Public Health)
" (Agriculture)
" (Education)
" (Local Administration)
" (Industries and Commerce)
" (Prohibition)
" (Finance)
" (Public Works Department)
" (Food)
" (Home)
" (O.P.R.). Hon. p.
His Excellency P.S.G. H.E. agrees.

(Sd.)

To Assistant Secretary

The file may now be sent to legal for further action.

(Sd.)

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REVENUE DEPARTMENT.

Memorandum for Legislation.

Village Officers--Acts passed during the Section 93 regime--Re-enactment.

The following three Acts were enacted by His Excellency the Governor, in exercise of the powers of the Provincial Legislature assumed by him by a Proclamation under section 93 of the Government of India Act, 1935:-

(1) The Madras Proprietary Estates' Village Service and hereditary Village-offices (Amendment) Act, 1941 (Madras Act XVIII of 1941).
(2) The Madras Hereditary Village-offices (Amendment)Act, 1942 (Madras Act XXVIII of 1942).
(3) The Madras Proprietary Estates' Village Service and Hereditary Village-offices (Amendment) Act, 1943 (MadrasAct XXI of 1943).

The above Acts, like other Acts passed during the section 93 situation, will be in force only for two years from the date of revocation of the Proclamation, unless they are, in the meantime, re-enacted or repealed by the Provincial Legislature. The Proclamation was revoked on 30-4-1946. The question for consideration now is whether legislation will be undertaken to re-enact the Acts.

2.The....

2.The Provisions of the Acts are explained in the following paragraphs.

3. The Madras Proprietary Estates' Village-Service and hereditary Village-Offices (Amendment) Act, 1941 (Madras Act XVIII of 1941).

(i) Prior to the passing of the above amending Act, there was no provision either in the Madras Proprietary Estates' Village service Act, 1894 (Madras Act II of 1894) of in the Madras Hereditary Village-offices Act, 1895 (Madras Act III of 1895) disqualifying a person who was insolvent from being appointed to any of the hereditary village offices governed by those Acts. It was considered that the appointment of an insolvent as a village headman or karnam was undesirable as it involved risk to Government's revenues, that if he misappropriated Government money passing through his hands there was no possibility of recovering it and that a village headman or karnam who was insolvent could not be expected to command the confidence and respect of the villagers. A Bill for amending the two Acts mentioned above was accordingly published for criticism. This Bill contained a provision that no person shall be eligible for appointment as a village headman or karnam if, in the opinion of the Rural Divisional Officer, he was not solvent. Objection was raised to this provision, mainly on the ground that there was scope for abuse of power. The provision was accordingly modified and the amending Act provides that a candidate shall be disqualified for appointment as a village headman or karnam (a) if he has petitioned to be adjudged an insolvent and his petition is pending disposal, or (b) if he, having been adjudged an insolvent by a civil court, has not obtained an order of discharge. It also provides for the removal of a village headman or karnam for these reasons. No other evidence of insolvency can be taken into account by the Rural Development Officer, when passing orders on the question of appointing a person to the post of village ~~or~~ ~~appointing~~ ~~a~~ headman or karnam or of removing a person from the post.

(ii) Before the passing of the amending Act, it was not quite clear whether the power conferred on the Rural Development Officer to approve of appointments of deputies submitted to him by the proprietor under the first paragraph of section 12 or of section 13 of Madras Act II of 1894, covered disapproval of an appointment not only on the grounds specified in seetion 10(1) but also on the general ground of unsuitability for the office. The need for a clarification of the intention underlying the Act in regard to this matter was pointed out by the High Court. The amending Bill sought to make the intention clear, but no provision was made therein for a second nomination by the proprietor when his first nomination was not accepted by the Rural Development Officer. Objections were raised regarding the absence of such provision. The amending Act accordingly contains the necessary provision.

(iii) Madras Acts II of 1894 and III of 1895 provided for a second appeal to the Board of Revenue against orders dismissing headmen, karnams and talaiyaris in proprietary estates and headmen and karnams in ryotwari areas, but not against orders removing them from office. There is little difference in ultimate effect between orders of dismissal and removal. Provision was therefore made in the amending Act for second appeals to the Board of Revenue against orders of removal also.

(iv) The amending Act also made it clear that an appeal would lie to the Board of Revenue under section 16(3) of Madras Act II of 1894 and section 23(1) of Madras Act III of 1895, against an order of dismissal or removal passed by the District Collector on an appeal, irrespective of whether such order confirmed or varied the order of his subordinate. The amendments were not

published.....

published for criticism as they were minor and as they only enlarged the right of appeal and could not, therefore, be said to affect village officers adversely.

4. The Madras Hereditary Village-offices (Amendment) Act, 1942 (Madras Act XXVIII of 1942).

(i) Section 5 of Madras Act III of 1895 declares that the emoluments of village offices should be inalienable and not liable to attachment. But this provision was of little practical value inasmuch as proviso (ii) to section 13(1) of the Act, as it originally stood required that Revenue Courts should, in suits relating to the recovery of the emoluments of village offices, proceed upon the assumption that such emoluments consisted only of the assignment of revenue. The operation of this assumption accelerated the passing of village artizan inams out of the hands of the artizan community. As there was still a substantial area which continued to be in the possession of the village artizans, it was considered that an attempt should be made to preserve what was left of those inams and that to this end the main Act should be amended so as to exclude the operation of the assumption mentioned above in their case. An amending Bill was accordingly prepared and published for general criticism. It contained the following provisions:-

(a) The assumption mentioned above was made inapplicable to inam lands which were in the possession of artizans on or after the date of publication of the Bill, viz., 14.7.1942, and the question whether the inam consisted of the land or only of an assignment of revenue was left open for decision on the merits of each case.

(b) All suits and appeals pending on 14.7.1942 were to be decided in accordance with the provisions of the Act as amended.

(c) Decisions of Revenue Courts given before 14.7.1942 were not to be questioned or re-opened, except in appeals pending on the above date or preferred after that date.

(d) The validity of mortgages or leases subsisting on 14.7.1942 were to be determined under the provisions of the Act as it stood before it was amended.

(ii) The Madras HighCourt had held that a minor heir to a village artizan office could not have the benefit of the proviso to section 14(1) of the main Act as it originally stood, for the reason that minority was not a disqualification for holding the office. This defect was rectified by the amending Bill and a provision was included therein for enabling such a minor to sue at any time within three years from the date of his attaining majority, while preserving his right to sue even during minority by a next friend.

No objections were raised by the public and the Bill was enacted without any modification as Madras Act XXVIII of 1942.

5.The Madras Proprietary Estates' Village Service and Hereditary Village-Offices (Amendment) Act. 1943 (Madras Act XXI of 1943.)

A minor registered as heir to a village office under section 13 of Madras Act II of 1894 or section 10(5) of Madras Act III of 1895, is deemed to have forfeited his right to the office, if he remains disqualified for such office for a period of

three....

three years after attaining majority. It was considered that it would not ordinarily be possible for a person so registered who was engaged in rendering war service to acquire the necessary qualifications within the time mentioned above, that the main Acts should be amended so as to allow the registered heir in such cases a period of five years from the termination of his war service to qualify himself for the office, that 'war service' should be defined as in the Madras Civil Services(War Service Personnel) Recruitment Rules, 1941 and that the amendment should be given effect to from the date of commencement of the war, viz., 3.9.1939. An amending Bill was accordingly prepared and published for general criticism. No objection or suggestion was received and the Bill was enacted without any modification as Madras ActXXI of 1943.

6. The reasons which led to the passing of the three amending Acts mentioned above still exist. If they are to be re-enacted, no changes need be made in them, except in regard to the definition of 'war service' in Madras Act XXI of 1943. The latest definition of the term in the Madras Civil Services (War Service Personnel) Recruitment Rules, 1941 extracted below:-

"War Service" shall mean--

(a) service of any kind in a unit or formation liable for service overseas or in any operational area;

(b) service in India under Military, Munitions or Stores, authorities or in factories with a liability to serve overseas or in any operational area;

(c) all other service involving subjection to Naval, Ministary or Air Force law;

(d) a period of training with a Military unit or formation involving liability to serve overseas or in any operational area;

(e) valuable service rendered to the fighting forces in other ways, e.g., by way of recruiting;

(f) service in A.R.P. or any other Civil Defence organisation specified in this behalf by the Central or Provincial Government;

(g) (i) any service connected with the prosecution of the war which a person is required to undertake by a competent authority under the provisions of any law for the time being in force;

(ii) such other service as has been, or may hereafter be declared as war service for the purpose of this definition.

Note: (1) Only whole-time service of any of the kinds specified above will be recognised as war service.

(2) Service in the Civil Pioneer Force, Madras Civil Labour Units and Madras Labour Units for Ceylon will be deemed to fall within the scope of clause (c).

(3) For the purpose of clause (g) (ii), service in the following has been recognised as war service:-

(i) National war Front organization.
(ii) Camouflage organization.
(iii) Special organization for the production of war supplies through small scale industries.
(iv) Any post associated with the training of war technicians, if duty in such posts is declared by the Central Government to be 'Military duty

(v) Post of Special Constable on Coastal Patrol duty.

(4) Persons whose service of any of the kinds specified above has been characterised in their discharge certificate or other document as 'indifferent' or 'bad' shall not be eligible for the concessions allowed by these rules.

(5).....

(5) Persons who have been discharged from the Army, Navy or Air Force or from any other kind of war service for any reasons other than those specified below shall not be eligible for the concessions allowed by these rules:-

(i) Medical invalidation.
(ii) Demobilization.
(iii) Completion of engagement.
(iv) Unlikely to become an efficient soldier or airman, etc.
(v) Services no longer required.
(vi) Character not tested.
(vii) Compassionate grounds.
(viii) Unfit for service.
(ix) Below standard.

(6) The service shall be in connection with the present war."

A definition on these lines may be substituted for the one in the Act.

7. Legal Department have advised that the legislation falls within the scope of Entries 6, 21 and 39 of the Provincial Legislative List and Entry 4 of the Concurrent Legislative List and that it is intra vires the Provincial Legislature.

8. Orders are solicited (1) whether Madras Acts XVIII of 1941 and XXVIII of 1942 may be re-enacted without any modification, and (2) whether Madras Act XXI of 1943 may be re-enacted with the modification suggested in paragraph 6 above.

(Sd.)

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GOVERNMENT OF MADRAS.
Legal Department.

U.O.Note No.3963-1 dated the 2nd April 1948.

Bills-The Madras Re-enacting and Repealing Bills-Changes made by the Joint Select Committee.

The Reports of the Joint Select Committee on the Madras Re-enacting and Repealing (No.I) Bill, 194, and the Madras Re-enacting and Repealing (No.II) Bill, 1948, will be found at page 1-26 c.f.

2. Under Secretariat Instruction 37(2), the Bills as amended by the Joint Select Committee should be examined by the administrative department (which in this case is the Legal Department) and the Finance Department, where the Bills affect or are likely to affect the finances of the Province.

3. It will be seem from the Reports of the Joint Select Committee that the Committee has made only one major change; Fourteen Acts, which, under the Bills as published, were to be re-enacted permanently, are proposed to be re-enacted only for a period of one year i.e. up to and inclusive of 29.4.1949. One Act which Bill No.II, as introduced, proposed to repeal viz., the Madras District Municipalities (Amendment) Act, 1942 (Madras Act I of 1942) the Joint Select Committee suggests should be re-enacted for a period of one year. In all these cases, the Joint Select Committee felt that the provisions of the Acts should be further examined by the Government and that fresh legislation should be introduced on the subjects in question, after such examination. A list of the 15 Acts referred to above is attached.

4. Some of the 15 Acts referred to in the foregoing paragraph affect the finances of the Province e.g., Madras Act XV of 1941 and Madras Act XVI of 1945.

5. With reference to Secretariat Instruction 37(2), copies of the above note may sent to the departments of the secretariat simul--

simultaneously for remarks, if any. The Bills will come up before the Legislative Assembly on 19-4-48 and the memorandum under Secretariat Instruction 37(2) has to be circulated to all the Honourable Ministers and His Excellency sufficiently in advance. The Departments of the Secretariat may therefore be requested to offer their remarks, if any, so as to reach this Department by the afternoon of Tuesday the 6th April 1948.

6. The following Acts in the list below (attached)especially concern the Revenue Department.

1. Madras Act XVIII of 1941.
2. Madras Act XXVIII of 1942

M.A.N. / 2.4.48.
K.V.R. / 2.4.48.

Forwarded/ By Order.

To the Revenue Department.

(Sd.)
SUPERINTENDENT.

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No. II Bill.

9. The Madras Proprietary Estates Village-Service and Hereditary Village-offices (Amount) Act, 1941 (M.A. XVIII of 1941).

10. The Madras Public Health (Amount) Act, 1941 (M.A. XIX of 1941.)

11 The Madras Hereditary Village-offices (Amendment) Act, 1942 (M.A. XXVIII of 1942.)

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OFFICE ASSISTANT
MADRAS RECORD OFFICE.

C.N.V.
19.12.

REVENUE DEPARTMENT.

To Assistant Secretary III.

Please see the Legal U.O. Note at page 22-23 above.

2. The provisions of the 2 amending Acts proposed by the Joint Select Committee for re-enactment for one year only are explained in para 3 and 4 of the Memorandum for Legislation put up below.

3. MADRAS ACT XVIII OF 1941. The provisions introduced by this Amending Act are salutary and there is no likelihood of their being modified or amended. As long as the present system of village establishments remains, these provisions will have to remain. The Government recently decided that proposals for the reform of the present system of village establishments should stand over, till the question of reform of the Land Revenue system has been decided. In the circumstances, this department may press for the re-enactment of the amending Act permanently.

4. MADRAS ACT XXVIII of 1942. The Joint Select Commitee introduced only one change in the Bill by extending its life by one year from 30th April 1948, instead of re-enacting it permanently so that the Government might have time to bring in suitable amendments. The Government recently accepted the Board's recommendation that the working of the Act should be watched for one more year - vide G.O. No.2049, Revenue, dated 2.9.1947. The Joint Select Committee's recommendation for the extension of the Act by one year from 30.4.1948 may be accepted.

V.S.
6.4.48.
V.N.
6.4.48.
V.K.R.
7.4.48.

Put up a copy of Act XXVIII of 1942.

G.V.
7.4.48.

Please see page 106-107 of G.O.No. 2815, Revenue, dated 21.12.1942. Madras Act III of 1945, which it amends, is at page 254-265 of Madras Code, Volume II.

V.N.
7.4.48.
G.V.
7.4.48.
K.V.R.
8.4.48.

The file may now be returned to Legal.

V.S.
9.4.48.

LEGAL DEPARTMENT.

The Joint Select Committee felt that as regards any Act which raised any doubt or controversial points, the best course would be for Government to bring up legislation separately for the permanent re-enactment of the Act. That would give the

Legislature....

Legislature sufficient time to scrutinize the Act carefully and satisfy itself whether all the provisions contained in it were necessary and if not, what modifications were required in them. But as the Act would lapse on 30-4-48 if not re-enacted, the Joint Select Committee recommended re-enactment for a period of 1 year. This gave both Government and the Legislature plenty of time, for the former to introduce a fresh Bill and for the latter to consider it carefully. This decision of the Joint Select Committee was accepted by the Ministers present at the meeting, including the Honourable Sri Madhava Menon, the Honourable Sri Chandramouli, and the Honourable Dr. Subbaroyan (who was in the Chair), and undoubtedly facilitated the easy acceptance of the Re-enacting Bills by the Joint Select Committee. The Joint Select Committee has agreed to the permanent re-enactment of no less than 106 Acts. Only 15 Acts were placed in the 1 year category. If we now seek to disturb the decision of the Joint Select Committee in regard to any of the Acts which have been recommended for re-enactment only for one year, it may be attacked as inconsistent with the understanding reached at the Joint Select Committee meeting. In fact, there was no detailed or real examination of any of the Acts, the re-enactment of which was limited to a period of 1 year. ~~If a substantial number of the members of the Committee felt that an Act required detailed and careful scrutiny, it was placed in the 1 year.~~ If a substantial number of the members of the Committee felt that an Act required detailed and careful scrutiny, it was placed in the 1 year category.

In view of the position, as explained above, Revenue will not perhaps press their proposal that Act XVIII of 1941 should be re-enacted permanently, instead of for a period of one year only, as proposed by the Joint Select Committee.

K.V.R.
9.4.48.

In the circumstances explained by J.S., Legal, our decision at page 10 ante regarding Act XVIII of 1941 may be reconsidered and we may agree to its re-enactment for a year for the present. Steps will be taken during the course of the year to get the Act re-enacted permanently.

G.V.
9.4.48

H.M. (L.R.)

May be sent to Legal

LEGAL DEPARTMENT.

Revenue.U.O.No.2171 C/47-6
12.4.48.

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LEGAL DEPARTMENT.

This file was sent to this Departments in connection with the joint Select Committee Reports on the Madras Re-enacting and Repealing (No I), (No II) Bills 1948.

These two Bills have now become law. This may now be returned to Revenue Departments.

(Sd.)

Legal U.O.No.3963/48-4
28.4.48.

REVENUE DEPARTMENT.

To Assistant Secretary III

Extracts from this file have been taken for separate action in this and A sections for the permanent re-enactment of Madras Act XVIII of 1941 and XXVIII of 1942 respectively, which have been re-enacted for one year only.
C. Nos. 27706 c/48 and 27779 A/48.

2. A printed copy of the Act, when received from legal will be communicated to the Board separately.

3. These papers may be recorded with a call book entry against 1.6.48 to see whether any action is required on the printed proceedings of the Assembly so far as the three acts dealt with in this file are concerned.

(Sd.)

Abstract:-

Acts--Madras Acts XVIII of 1941, XXVIII of 1942 and XXI of 1943 relating to village officers--Re-enactment--Papers--recorded.

Yes
The file for the permanent re-enactment shluld be put up quickly. The page in this file should be kept in fact for the purpose.

(Sd.)
11.5.48.

G.O.Ms.No.1142 dated/12/5/48.

RECORDED.

OFFICE ASSISTANT
MADRAS RECORD OFFICE

C.NV.
19.12.